

Thomas G. Bailey, Jr. (TB 2099)
BLEAKLEY PLATT & SCHMIDT, LLP
One North Lexington Avenue
White Plains, New York 10601
Tel: (914) 949-2700

Darren J. Quinn (DQ 9914)
Alexander E. Papaefthimiou (AP 0623)
LAW OFFICES OF DARREN J. QUINN
12702 Via Cortina, Suite 105
Del Mar, CA 92014
Tel: (858) 509-9401

Counsel for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OLAES ENTERPRISES, INC., d/b/a ODM,

Plaintiff,

-against-

A.D.SUTTON & SONS, INC., BIO WORLD
MERCHAONDISING, INC., d/b/a BIO DOMES HEADGEAR,
BOSTON AMERICA CORP., BRIEFLY STATED, INC., W.R.
CASE & SONS CUTLERY, CLEAN FUN PROMOTIONAL
MARKETING, INC., C-LIFE GROUP, LTD., COFFEE
LEGENDS, INC., DESPERATE ENTERPRISES, INC.,
EVANDALE GIFTS LLC, HORIZON NY INC., HOUSTON
HARVEST INC., INNOVATIVE DESIGNS LLC, KOLDER,
INC., STRETCH-0-RAMA, INC., d/b/a LONGSTREET,
UNISYSTEMS, NC., d/b/a MODERN PUBLISHING,
PLASTICOLOR MOLDED PRODUCTS, INC., ROBISON'S,
INC., d/b/a POWER TRIP, SPECTORE CORP.,
TECHNICRAFT INDUSTRIES, INC., THE HUT LLC,
VENDING SUPPLY, INC., WHITESIDE MANUFACTURING
COMPANY, and YOU AND ME LEGWEAR LLC,

Defendants-Counterclaim Plaintiffs,

-against-

ORANGE COUNTY CHOPPERS, INC., ORANGE COUNTY
CHOPPERS MERCHANDISING LLC, and ORANGE COUNTY
CHOPPERS LICENSING LLC,

Counterclaim Defendants

MEMO ENDORSED

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 11/6/10
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09 CIV 8680 (CM) (PED)

**MOTION TO DISMISS
DESPERATE
ENTERPRISES, INC.
PURSUANT TO
FED. R. CIV. P. 41(a)(2)**

-----X.

Pursuant to contemporaneous settlement agreement between the parties hereto, plaintiff OLAES ENTERPRISES, INC., d/b/a ODM moves to dismiss with prejudice defendant DESPERATE ENTERPRISES, INC. ("DESPERATE") pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure.

The counterclaim for indemnification by DESPERATE as to or against Orange County Choppers Merchandising LLC, Orange County Choppers, Inc. and Orange Choppers Licensing LLC is not dismissed.

Dated: White Plains, New York
December 7, 2009

Respectfully submitted,

BLEAKLEY PLATT & SCHMIDT, LLP

By: Thomas G. Bailey, Jr.
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Del Mar, CA 92014
Tel: (858) 509-9401

*Counsel for Plaintiff Olaes Enterprises, Inc.
d/b/a/ ODM*

*Motion
granted.
(CH)*

*Allen J. Mol
1/5/10*